M.W. BARRET v. PUBLIC PROSECUTOR

[A.Cr.J. (Syed Agil Barakbah J.)
October 22, 1981]
[Alor Star – Kedah Criminal Appeal
No. 30 of 1980]

Criminal Law and Procedure – Charge of trafficking in dangerous drug – Evidence of admissions to customs Officer – Whether admissible – Failure to produce bag in which dangerous drug was alleged to be found – Correct test not applied in considering defence – Dangerous Drugs Ordinance, 1952, ss. 37, 37A & 39.

Dangerous Drugs – Charge of trafficking in dangerous drug – Evidence of admission to customs officer – Whether admissible – Failure to produce bag in which dangerous drug alleged to be found – Dangerous Drugs Ordinance, 1952, ss. 37, 37A & 39.

Evidence – Evidence of admission to customs officer – Whether admissible – Charge under Dangerous Drugs Ordinance – Dangerous Drugs Ordinance, 1952, s. 37A.

This was an appeal from the decision of the President, Sessions Court, Kangar, by the appellant who had been convicted for trafficking in cannabis and sentenced to life imprisonment. The facts were that a Customs Officer boarded a Bangkok express train bound for Butterworth at Padang Besar Railway Station to check the luggage of passengers. He saw the appellant with a bag by his side. The Customs Officer alleged that the appellant admitted that the bag next to him was his and at the request of the Customs Officer the appellant unzipped it. The Customs Officer searched the bag and found 7 packages of cannabis concealed in the fold of some clothings. The Customs Officer alleged that the appellant admitted that the 7 packages belonged to him and identified them to be marijuana. The accused was arrested and later charged. At the trial the alleged admissions of the appellant to the Customs Officer was admitted in evidence and the learned President in his grounds of judgment said that the prosecution's case was reinforced by the oral admission of the appellant. In his defence the appellant denied making the oral admission. He said that he told the Customs Officer that the bag and cannabis belonged to his friend, who had earlier been arrested for another offence relating to drugs found in his bag. He called his friend as a witness and the friend admitted owning the bag and the seven packages of cannabis found therein. The bag was not produced by the prosecution as it was stated it had been returned to the appellant.

Held, allowing the appeal: (1) since the Customs Officer in this case was not a senior officer of Customs the alleged admissions were rendered inadmissible on the ground that they are not statements made in accordance with section 37A of the Dangerous Drugs Ordinance 1952;

(2) in this case the learned President did not rely on the presumptions under the Ordinance but he called for the defence on the strength of the other evidence, reinforced by the appellant's admissions to the Customs Officer. However, it required much stronger and more convincing evidence than the evidence brought in the case for the prosecution to prove the charge against the appellant without the aid of the presumptions;

(3) in this case the production of the bag was material as the facts and surrounding circumstances involved not one bag but three different bags and the discovery of cannabis in two of them leading to the arrest of the other person and the appellant almost at the same time and place are all matters which have to be considered in fairness to the defence;

(4) in this case there were irregularities, wrong inferences and improper admission of evidence, which occasioned a failure of justice and could not be cured by section 422 of the Criminal Procedure Code. The learned President had failed to apply the correct test in considering the defence and the conviction was therefore against the weight of the evidence.

Cases referred to:–

(1) *Chua Beow Huat* v. *Public Prosecutor* [1970] 2 M.L.J. 29.
(2) *Abu Bakar Nazmeer* v. *Public Prosecutor* [1970] 2 M.L.J. 216, 218.
(3) *Abdul Ghani bin Jusoh & Anor* v. *Public Prosecutor* [1981] 1 M.L.J. 25
(4) *Public Prosecutor* v. *Yuvaraj* [1969] 2 M.L.J. 89, 92.
(5) *Tong Peng Hong* v. *Public Prosecutor* [1955] M.L.J. 232.
(6) *Chong Ah Chai* v. *Public Prosecutor* [1979] 2 M.L.J. 262.
(7) *Hocking* v. *Ahlquist Brothers Ltd.* [1943] 2 All E.R. 722; [1944] 1 K.B. 120.

APPELLATE CRIMINAL JURISDICTION.

James Ponniah (*Joseph Chia* with him) for the appellant.

Abu Saman bin Haji Yusof (Deputy Public Prosecutor) for the respondent.

Cur Adv. Vult.

Syed Agil Barakbah J.: This is an appeal against the decision of the President, Sessions Court, Kangar by the Appellant who was convicted for trafficking on his own behalf 1,384.60 grammes of cannabis under section 39 (1) (a) of the Dangerous Drugs Ordinance, 1952 and sentenced to imprisonment for life with effect from December 22, 1977 and with whipping of three strokes of the rattan under section 39 (B) (2) of the same Ordinance. The Appellant was represented by Mr. James Ponniah who was assisted by Mr. Joseph Chia. The DPP Abu Saman bin Haji Yusof appeared for the Respondent. Twenty grounds of appeal are filed in the petition; some of them relate to points of law.

The facts adduced by the prosecution and accepted by the trial President are that on December 22, 1977 at about 4.30 p.m. Customs Officer (PW.1) boarded a Bangkok express train bound for Butterworth at Padang Besar Railway Station to check the luggage of passengers. On entering a second class coach he saw the Appellant seated with a bag by his side. After identifying himself to

the Appellant PW.1 asked him whether he had any dutiable goods to declare. The latter replied that he had none. The Appellant however admitted that the bag next to him was his. At the request of PW.1 the Appellant unzipped the said bag and PW.1 proceeded to search it. In the course of the search he recovered 7 packages of cannabis concealed in the fold of some clothings. In response to PW.1's enquiry the Appellant was alleged to have admitted that the 7 packages belonged to him and further identified them to be marijuana. PW.1 seized the bag, clothings and the packages and arrested the Appellant. The same day he handed the exhibits to the Superintendent of Customs (Preventive) (PW.2) who retained all the exhibits but returned the bag to the Appellant. Subsequently the 7 packages (Exhibits P4A to G) were sent to the Government Chemist who confirmed in his report (Ex. P5) that they contained cannabis weighing 1,384.60 grammes. The Appellant was subsequently charged.

Grounds 3 to 6 relate to points of law and facts alleging that the learned President erred in admitting certain evidence relating to the admissions alleged to have been made by the Appellant to the Customs Officer (PW.1) and that he relied exclusively on the said evidence when convicting the Appellant of the charge. Alternatively he erred in law and in fact in accepting that evidence in the light of lack of corroboration, the Appellant's denial of having made such admission, the apparent language barrier that existed between the Appellant and PW.1 and the questionable veracity of PW.1.

Mr. James Ponniah submitted that the alleged admissions were not admissible in law or if otherwise admissible, only slight weight be given to them. The alleged evidence comprise of two parts viz. (i) the Appellant's admission to PW.1 that the bag placed next to him was his, and (ii) subsequently after the discovery of the packages containing cannabis, that the packages were his. It is clear that both admissions were made before the Appellant was arrested by PW.1. On examination of the record and in particular the grounds of judgment I observed that the trial President admitted the alleged admissions as having been voluntarily made to PW.1 by the Appellant. He did not give any reasons for the decision nor touch on the provision of section 37(A) (1) of the Ordinance in spite of the submission by the defence counsel. The learned DPP submitted that the admissions are admissible under section 24 of the Evidence Act 1950 because they were made voluntarily without any inducement, threat or promise proceeding from any person in authority and the provisions of sections 25 and 26 of the same Act do not apply to customs officers. I agree with respect that the latter sections do not apply to customs officers on the ground that they are not police officers (*Chua Beow Huat* v. *Public Prosecutor*)[1] and a confession or admission of guilt made by a suspect or an accused person to a customs officer is not *ipso facto* rendered inadmissible in evidence by the provisions of those sections. (*Abu Bakar Nazmeer* v. *Public Prosecutor*)[2]. However the authorities relate to cases in which the accused person were charged under the Customs Act 1967 which does not contain expressed provisions as in section 37A of the Dangerous Drugs Ordinance. In the latter the functions and duties including the powers of inspection, seizure and arrest as provided in Part VI are given to the Customs as well as Police Officers. The words 'police officer', 'officer of customs' and 'senior officer of customs' are also defined therein. It is also provided under section 37 (A) that any statement by an accused person at any time, whether before or after he is charged, whether it amounts to a confession or not or whether oral or in writing, to a police officer of or above the rank of inspector or to any senior officer of customs shall be admissible in evidence in his trial notwithstanding anything contained in any written law, subject of course to proviso (a) which incorporates the provision of section 24 of the Evidence Act and to proviso (b) which requires a caution to be administered by the recording officer to the accused according to the words provided therein if the statement is taken after his arrest. Similar provisions appear in section 113 of the Criminal Procedure Code and few other Acts. No such provisions appear in the Customs Act.

Construing the Ordinance as a whole it is clear that the provisions of section 37A apply to statements made to police officers of or above the rank of inspector and to senior customs officers, in cases falling within the ambit of the Act.

Now, coming back to the relevant facts in the present appeal, although PW.1 was performing his functions and duties under the Customs Act when he checked the bag alleged to belong to the Appellant, on the discovery of the cannabis therein, his functions and duties were no longer governed by that Act but by the Dangerous Drugs Ordinance. The test for the purpose of determining the admissibility or otherwise of the admissions depends, not on the nature of duty the customs officer is performing at the material time, but on the type of

offence the accused has committed and the law under which he is being charged. In the premise, had uncustomed or prohibited goods been found in the bag by PW.1, the admissions by the Appellant would have been admissible under the Customs Act. In the present case section 37A of the Act arises and comes into play. The clause "any statement ... made at any time, whether before or after such person is charged ..." and the fact that the Appellant was charged, not under the Customs Act but under the Dangerous Drugs Ordinance, clearly indicate that the alleged admissions are caught within the ambit of the section. The administration of the cuation under proviso (b) did not arise because the statements were made prior to arrest. However, since PW.1 was not a senior officer of customs the alleged admissions are rendered inadmissible on the ground that they are not statements made in accordance with section 37A. A similar decision was made by Wan Suleiman F.J. in *Abdul Ghani bin Jusoh & Anor* v. *Public Prosecutor*[3] relating to a statement of an accused person recorded by a Probationary Police Inspector as not having been made in accordance with section 113 of the Criminal Procedure Code. The learned President therefore erred in admitting the statements which amount to admissions alleged to have been made by the Appellant.

The next step is to examine whether the trial President relied exclusively on the said admissions in calling for the defence. The learned DPP pointed out that in his grounds the trial President mentioned that the prosecution case was "reinforced" by the oral admission of the Appellant to PW.1. He submitted that by the word "reinforced" the President was not relying solely on the admissions. The ordinary meaning of the word "reinforce" in the *Shorter Oxford English Dictionary* is "to make more cogent or possible, to furnish with additional support or to strengthen by the addition of".

The trial President in his grounds states:—

"Apart from the presumptions under section 37(d) and 37 (da) of the Dangerous Drugs Ordinance, 1952, the prosecution's case was reinforced by the oral admission of the Accused who admitted to PW.1 that the bag and the cannabis (Ex. P4A-G) were his. At the end of the prosecution case, I find that the case against the Accused has been proved beyond reasonable doubt which if unrebuted would result in the conviction of the Accused".

Subsequently, while dealing with the defence case he says:—

"In law there is no duty imposed on the Accused to prove his innocence. His duty is merely to raise a reasonable doubt in the prosecution case."

Subsequently in concluding the defence case, he held that the defence had failed to raise a reasonable doubt in the prosecution case, found the Appellant guilty and convicted him of the charge.

It seems to me that the trial President has not made himself clear whether he was relying on the presumptions. Although he had the presumptions in mind, he called for the defence on the strength of other evidence as "reinforced" by the Appellant's admissions to PW.1. If he had relied on the presumptions, he would have, judged from his past experience, applied the proper test i.e. whether the bag was in the custody or control of the Appellant at the material time. With the exclusion of the improper admission of the evidence of the alleged admissions, the question that arises is whether there was sufficient evidence for the President to conclude, as he did, that the bag and the cannabis belonged to the Appellant.

The learned President considered the Appellant's conduct in that he unzipped the bag which was lying on his seat without reluctance and without informing PW.1 that it belonged to his travelling companion. Evidence show that the latter had his bag checked about ten minutes earlier by the police and some cannabis were recovered therein. In the light of the above he concluded that the Appellant would have objected to opening the bag and had he done so, it would not be proper for PW.1 to check the contents in the absence of the owner as it would have served no purpose. In the circumstances he concluded that the bag belonged to the Appellant. Since the admissions are wrongly admitted, that evidence by themselves are insufficient to infer ownership and knowledge. If at all, they may lead to the inference that the Appellant was having it in his custody or control, provided that it is the only reasonable inference that can be drawn. Custody or control by itself falls short of possession which in law requires the elements of consciousness, power of disposal and physical possession. It does not and cannot amount to the act of trafficking unless and until the presumptions under section 37 (d) and (da) are invoked. The presumptions are incorporated in the Act in order to enable the prosecution to prove their case without the necessity of proving the other ingredients. Under section 37 (d) all the prosecution need prove is that the Appellant was found to have in his custody or under his control anything whatsoever containing cannabis. It is then presumed that the Appellant is in possession of the said drug and to have known its nature. The onus is shifted to the Appellant to prove to the contrary

on the balance of probabilities i.e. whether it is likely in the circumstances that he has no such possession or knowledge (see *Public Prosecutor* v. *Yuvaraj*)[4]. In my considered judgment it requires much stronger and more convincing evidence than the present, for the prosecution to prove the charge against the Appellant without the aid of the presumptions.

With regard to the alleged discrepancy between the evidence of PW.1 and the Supt of Customs (PW.2) relating to the exhibits in the bag, evidence show that PW.2 checked the contents after the bag was handed to him by PW.1 and described the positions of the trousers, the sock and the cannabis. On the contrary there was supporting evidence instead of contradiction. Secondly I do not think that PW.1's evidence as a whole require any corraboration. The trial President saw and heard him give evidence from the witness box and concluded that PW.1 was a reliable witness. There is no legal requirement that a reliable witness particularly in the course of performing his official duties, needs corroboration.

I also cannot accept the allegation of any apparent language barrier between the Appellant and PW.1 is material in the circumstances of the case. If at all there was such a barrier, it was not difficult but rather normal practice to communicate in sign language with or without speaking. That could have been easily understood by PW.1, a customs officer.

The other grounds relate to the defence. In his evidence the Appellant denied making the oral admission but on the contrary maintained that he told PW.1 both the bag and the cannabis belonged to his friend, DW.1. DW.1 corroborated his evidence on material particulars, admitted owning the canvas bag and the seven packages of cannabis found therein. He maintained that he had given the same story both in his cautioned statement and his evidence in court when he was earlier charged for trafficking cannabis.

In this regard it is alleged at grounds 11 and 12 that the learned President erroneously drew inferences which were unfavourable to the Appellant and which were not supported by evidence. Firstly, the Appellant's failure to refuse opening the bag when requested by PW.1 meant that the bag was his. Secondly, since the Appellant said "I think it is marijuana" when shown the packet, meant he obviously knew the nature and contents of the packages.

The trial President in his grounds states that it was within the Appellant's power to refuse to open the bag and if he so resisted there was nothing that PW.1 could do to compel him. The President did not accept the Appellant's evidence that he told PW.1 the bag belonged to DW.1 and that PW.1 did not seem to understand him. With respect I agree that there was no necessity for the Appellant to have opened the bag, even if PW.1 insisted. In his grounds the learned President states:—

> "The admission in the train by Accused regarding the ownership of the bag and cannabis (Ex. P4A-G) was made to PW.1 on the spur of the moment, consistent with the conduct of (a) person caught red-handed by an official on duty. It was made voluntarily. I have no reason to suspect that the evidence of PW.1 was concocted.
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> Further I note that by his own admission, the Accused identified to PW.1 the substance in the package to be marijuana. Obviously, a person must have known the nature and content of the packages to do such a thing."

In drawing such inference he relied on the inadmissible evidence of the admissions. He had therefore made wrong inferences which in my opinion are prejudicial to the defence. The fact that the Appellant said "I think it is marijuana" on being asked by PW.1, if at all admissible, must be considered according to the sequence of events that had taken place. He had seen similar packets of cannabis found in DW.1's bag and had also seen the seven packages recovered from the trousers placed in the bag in question. What he said to PW.1 regarding the latter can also be inferred as relating to his knowledge that the packages are marijuana and not as to his prior knowledge of the presence of marijuana in the said bag. The accepted principle is that when there are more than one inference, the inference that should be drawn is the one in favour of the defence.

Further in ground 14 the President held the silence of DW.1 in supporting the Appellant's evidence that their clothings were mixed up, is an apparent inconsistency in the defence. Since DW.1 was not asked on the point in cross-examination, his silence cannot be taken as a material inconsistency. Similarly, the failure by the Appellant to mention that DW.1 had testified that both of them were taken together to the Police Station, Padang Besar, cannot be a contradiction at all since the Appellant stated in his evidence to the effect that he and DW.1 were escorted together to the Police Station. The first discrepancy, if at all, is minor and does not affect the defence case. The latter should have been ignored. The trial President therefore erred in evaluating the defence

both in law and in fact which is against the weight of the evidence.

The next important ground touches the non-production of the bag in which the drugs were found. I propose to deal with grounds 1 and 2 which refer to the prosecution case and grounds 8, 9, 10 and 15 which refer to the defence case, together as they are inter-related. It is clear that the said bag was not produced by the prosecution during the trial. PW.1 after discovering the drugs in it, handed it with the other exhibits to the Supt. of Customs (PW.2) who in turn returned it to the Appellant the same day, with some clothings. PW.2 did so because he considered the bag to be irrelevant to the case. The prosecution maintained that it was the only bag recovered from the Appellant by PW.1 on the train on the day in question. However neither PW.1 nor PW.2 described the type and colour of the bag nor was any photograph produced to enable them to identify it at the trial. The learned defence counsel submitted that the absence of the bag had prejudiced the Appellant in making a proper defence.

The fact that the Appellant was travelling with DW.1 and sitting opposite each other in the same coach, as shown by the photographs, was accepted by the President. According to the defence the Appellant carried one brown leather bag which was placed on the rack. DW.1 on the other hand had two canvas bags, one blue which was also placed on the rack (Ex. D8) and the other green which was placed on the seat beside DW.1. When the police examined Ex. D8 and found 9 packets of cannabis therein DW.1's green bag which had been taken down from the rack was lying next to the Appellant's bag on his seat. On the discovery of 9 packages of drugs in Ex. D8 the police took DW.1 away together with the exhibits leaving the Appellant with the two bags. It was on the examination of DW.1's green bag by PW.1 about ten minutes later that the 7 packages of cannabis were recovered in the folds of three pairs of jeans (Ex. P2A to C) and in the stocking (Ex. P3). DW.1 was subsequently charged for trafficking in the drugs found in Ex. D8, was convicted and sentenced to life imprisonment. He also claimed ownership of exhibits including the drugs (Ex. P4A to G) and the missing green bag. The Appellant's evidence touching the matter are corroborated on material particulars by DW.1. His cautioned statement in the former case was admitted as Ex. D.12 at the defence stage. It was made about five days after DW.1's arrest.

On the point of non-production of the bag, the learned DPP argued that it was unnecessary on the ground that the jeans and the stocking contained the drugs and therefore sufficient to justify the requirement of section 37 (d) on the authority of *Tong Peng Hong* v. *Public Prosecutor*[5]. Thomson J. (as he then was) explained the meaning of the words "anything whatsoever" which in his view, is governed and greatly restricted by the word "containing". The latter "implies some measure of holding or restriction" i.e. "something which surrounds or holds another so as to prevent the other thing from being elsewhere". In my view the learned DPP's argument tends to narrow down the meaning inconsistent with the real intention of the sub-section because it may further be argued that the plastic wrappers which hold the drugs and not the jeans and the stocking, are the containers. To quote Thomson J. in the same case "A thing containing another thing is not synonymous with a thing in which that other thing is". It is the bag which holds the drugs and for that matter the clothings, thus preventing them from going elsewhere. The bag should have been retained by PW.2 and produced at the trial by the prosecution for the purpose of invoking the presumption under section 37 (d).

It was also submitted on the authority of *Chong Ah Chai & Ors.* v. *Public Prosecutor*[6] in which the Federal Court hold that the non-production of a cement mixer at the trial in which the accused was charged with theft thereof, was not prejudicial to the defence on the ground that there was no material break or gap in the chain of evidence regarding the identity of the subject matter of the offence. The authority is not in point in the present case because the drugs which are the subject matter of the offence were in fact produced as exhibits. It is true both PW.1 and PW.2 had seen the bag, examined the articles inside and subsequently returned it to the Appellant. Its presence and involvement had also been proved by the prosecution and it might well be that its production was not material in normal circumstances. (See *Hocking* v. *Ahlquist Brothers Ltd.*[7]) Nevertheless the facts and surrounding circumstances of this case involved not one but three different bags, and the discovery of cannabis in two of them leading to the arrest of DW.1 and the Appellant almost at the same time and at the same place, are matters which have to be considered in fairness to the defence. The more so if the presumptions under section 37 (d) and (da) are to be invoked to enable the defence to rebut on the balance of probabili-

ties. The bag could have been obtained from the Prisons Department where the Appellant had to hand it over, before he was detained in prison for trial.

The learned President however, considered DW.1's evidence and found contradiction with regard to his claim of ownership of the missing bag. According to DW.1's cautioned statement his other bag containing documents was confiscated by the police while the missing bag according to the prosecution evidence contained clothings and the cannabis. On that ground he concluded that it was not probable that the latter belonged to DW.1. The police register (Ex. P7) however shows that the bag contains cash and books and not only documents. That necessitated an explanation from DW.1 before any conclusion was reached whether there was a real contradiction. The prison officer (DW.2) gave evidence of the receipt of only one bag from DW.1 before detaining him in the prison. That bag (Ex. D8) was produced at the trial. Be that as it may, I cannot with respect agree that the contradicting evidence by itself is adequate in convicting the Appellant of the charge in the light of the irregularities, wrong inferences and improper admission of evidence which, in my view have occasioned a failure of justice and cannot be cured by section 422 of the Criminal Procedure Code. The learned President also failed to apply the correct test in considering the defence. The conviction is therefore against the weight of the evidence as a whole. A retrial will serve no purpose in the light of the above. I have no alternative but to quash the conviction and set aside the sentence. The Appellant is entitled to an acquittal and discharge and I order accordingly.

Conviction quashed.

Solicitors: *Stanley Ponniah & Co.*

TEOH SUAN ENG v. LEW MENG SHIN & ANOR.

[O.C.J. (George J.) December 4, 1981]
[Raub – Civil Suit No. 6 of 1980]

Damages – Spinal injuries resulting in paraplegia – Quantum – $75,000 for pain and suffering.

The plaintiff was travelling as a passenger in a motor bus when it went off the road. The plaintiff suffered a fracture of the first lumbar vertebra and injury to her spinal cord that resulted in paraplegia. Liability in negligence was admitted by the defendants.

The plaintiff was earning $85 per month as a clerk before the said accident.

Held: the plaintiff was awarded agreed special damages: $4,877; and for loss of earnings up to date of judgment: $14,400; services of a maid up to date of judgment: $9,000; future loss of earnings; $22,300; services of a maid for the future: $13,900; pain and suffering: $75,000 totalling $139,477.

Per Curiam: "[there was] no excuse for the legal advisers of the plaintiff resting their case on a one line badly worded medical report."

Cases referred to:–

(1) *Raja Mokhtar bin Raja Yaacob* v. *Public Trustee* [1970] 2 M.L.J. 151

(2) *Oliver* v. *Ashman* [1961] 3 W.L.R. 669; [1961] 3 All E.R. 323, C.A.

CIVIL SUIT.

G. Varghese for the plaintiff.
S.P. Veloo for the defendants.

Cur. Adv. Vult.

George J.: On the morning of the September 25, 1976 the Plaintiff was travelling as a passenger in a motor bus that was proceeding from the Casino and Hotel Complex at Genting Highlands towards Kuala Lumpur when it went off the road as a result of which the Plaintiff suffered a fracture of the first lumbar vertebra and injury to her spinal cord that has resulted in the Plaintiff suffering from paraplegia. The Plaintiff had testified that she has no control over movements of her bowel and bladder. The paucity of information in the medical report has been the subject of justified criticism by learned Counsel for the defence and has caused me more than a little anxiety on whether I should hold that in fact the Plaintiff is a paraplegic for life and whether her disabilities include lack of control over the excretory organs. Fortunately for the Plaintiff the medical report has a reference to treatment for "bowel and bladder care". My attention was drawn to the reference on "paraplegia" at 304 of the *Short Encyclopaedia of Medicine for Lawyers by Levitt* where it is stated that in the paralysis known as paraplegia the bladder and rectum are often involved in the paralysis. As the reflexes of micturition and defecation are controlled by the spinal cord at the first lumbar vertebra level and since the Plaintiff was treated for bowel and bladder care the probabilities are, by a nose as it were, in favour of the contention that the Plaintiff did in fact suffer a lack of control of those excretory functions. My forced researches into the realms of medicine suggest that where there is paralysis as a result of injury to the spinal cord and there is no significant im-